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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,706	02/08/2006	John Finlayson	FAKS/0002	9776
7590 02/13/2009				
William B Patterson Moser Patterson & Sheridan 3040 Post Oak Boulevard Suite 1500 Houston, TX 77056			EXAMINER ABBOTT, YVONNE RENEE	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 02/13/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/541,706

Applicant(s)

FINLAYSON, JOHN

Examiner

Yvonne R. Abbott

Art Unit

3644

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date _____

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.
2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. 119(a)-(d) based upon an application filed in Australia on 1/24/2003, and PCT filed 5/22/2003. A claim for priority under 35 U.S.C. 119(a)-(d) cannot be based on said applications, since the United States application was filed more than twelve months thereafter.

Specification

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The abstract of the disclosure is objected to because the word "means" is used throughout and should be omitted. Correction is required. See MPEP § 608.01(b).

Claim Objections

5. Claim 11 is objected to because of the following informalities: the first word "To" should be omitted. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 1-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Throughout the claims (for example, claims 1, 3, 4,8,10, 14, 16, 17, 25, 27) Applicant uses indefinite language which makes it unclear as to what exactly is being claimed. Examples of such language are the use of words and phrases like "typically...", "or any other ...", "for example ...", and "such as ...". These phrases or words render the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

9. Claim 12 recites the limitation "'the computing means" in line 4. There is insufficient antecedent basis for this limitation in the claim.

10. In claim 17, by referencing the "typically the marking means ... is that disclosed in PCT/AU02/00858)" Applicant has not particularly pointed out and distinctly claimed

their invention. Use of the word "typically" and reference to the patent should be omitted.

11. In claim 1, line 9, it is not understood what is meant by the phrase "irrespective the number of EID reading means reads an EID".

12. Regarding claims 11 and 14, the word "means" is preceded by the word(s) "divider" and "wireless", respectively, in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 102

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1, 9, 12, 18 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulte (6019061). Schulte discloses an identifying apparatus to identify objects typically livestock or humans having electronic identification devices (EID), including multiple EID reading means (19, 25), positioned in equally spaced apart relationship defining multiple pathways (15) through which EID's carried by the objects, to be read, can pass in a single file through anyone of the pathways and wherein each

EID reading means is adapted to read any EID as the objects pass individually through any one of the pathways and computing means adapted to record each EID carried by an object only once; wherein the a controller (20) reads and transmits the collected data; wherein the identifying apparatus is associated with partitioned holding pens having drafting gates wherein livestock exiting a pathway can be directed through a drafting gate to selected holding pens.

Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

16. Claims 1-6, 8-10, 12-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Finlayson (6997140) in view of Tucker (5959526). Finlayson discloses a portable identifying apparatus to identify objects typically livestock or humans having electronic identification devices (EID) (2) which can be a rumen pellet or ear tag (col. 2, lines 17-19), or other tag attached to an animal, a reading means including an antenna (10), a defined pathway through which EID's carried by the objects, to be read, can pass in a single file, and wherein the EID reading means is capable of reading any EID as the objects pass individually through the pathway and computing means adapted to record each EID carried by an object only once; wherein the pathway is adjustable and adapted to enable reading of the EID irrespective of the

physical size of the object (col. 5, line 55); wherein the EIC's are used with photoelectric motion sensors (12,13,14,17); wherein the motion sensor can be and infrared or microwave sensing means, and can be used to provide means of counting objects as they pass whether or not the EID is activated; wherein a controller (21) reads and transmits the collected data; wherein there is a visual and/or audible alarm system (19) actuated when an object passes without activating the reading means, and a marking means (16) which marks objects that do not activate the reading means (col. 2, lines 56-65). Although not specifically disclosed, to provide that the controller is connected to cabled, wireless or a GPS device (as recited in claims 13-15) as a means of transmitting data would have been obvious depending on the networking capability of the area where the system resides; and wherein the system is mains powered and can be powered by solar or other rechargeable batteries (col. 5 lines 59-63).

Finlayson, however, does not disclose that the system includes multiple EID reading means positioned in spaced apart relationship defining multiple pathways. Tucker teaches an animal identification system in which multiple EID reading means positioned in spaced apart relationship defining multiple pathways (20,21) (col. 2, lines 30-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide equally spaced multiple pathways and corresponding reading means in the Finlayson system as taught by Tucker in order to accommodate multiple animal groupings, prevent bottle-necking, and provide for more time efficient processing of the animals. With respect to claim 18, Tucker further teaches that it would be obvious to

have partitioned holding pens and pathways through which livestock can be directed in order to sort or screen particular reasons based on the identifying variables.

Allowable Subject Matter

17. Claims 7 and 11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yvonne R. Abbott whose telephone number is (571) 272-6896. The examiner can normally be reached on Monday-Thursday 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on (571) 272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Yvonne R. Abbott/
Primary Examiner, Art Unit 3644